



Revised 03/06 WDNV

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

1. Michael Frederick 96A7056
2. _____

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. (first name unknown) Vandergrif Officer 4. J. Robinson officer
2. Patrick Murphy officer 5. D. Horton Sergeant
3. Michael Robyck officer 6. M. Shehan Acting Superintendent

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: Michael Frederick 96A7056
Present Place of Confinement & Address: Elmira Correctional Facility
Box 500 Elmira, New York 14902-0500

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

Name of Defendant: Michael Robyck

Official Position of Defendant: Correctional Officer

Defendant is sued in _____ Individual and/or ☒ Official Capacity

Address of Defendant: Southport Correctional Facility
236 Institutional Road P.O. Box 2000
Pine City New York 14871

Name of Defendant: Donald Holton

Official Position of Defendant: Sergeant (Area Supervisor)

Defendant is sued in _____ Individual and/or ☒ Official Capacity

Address of Defendant: Southport Correctional Facility 236 Institutional
Road P.O. Box 2000 Pine City, New York 14871.

Name of Defendant: Michael Shelhan

Official Position of Defendant: Deputy Security / Acting Superintendent

Defendant is sued in _____ Individual and/or ☒ Official Capacity

Address of Defendant: Southport Correctional Facility
236 Institutional Road
P.O. Box 2000
Pine City New York 14871.

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: (first name unknown) Vandergrif

(If applicable) Official Position of Defendant: Correctional Officer

(If applicable) Defendant is Sued in Individual and/or ☒ Official Capacity

Address of Defendant: Southport Correctional Facility (B-block) Rec off.
236 Institutional Road P.O. Box 2000 Pine City New York 14871

Name of Defendant: Patrick Murphy

(If applicable) Official Position of Defendant: Correctional Officer

(If applicable) Defendant is Sued in Individual and/or ☒ Official Capacity

Address of Defendant: Southport Correctional Facility
236 Institutional Road P.O. Box 2000 Pine City New York 14871

Name of Defendant: Jamie Robinson

(If applicable) Official Position of Defendant: Correctional Officer

(If applicable) Defendant is Sued in Individual and/or ☒ Official Capacity

Address of Defendant: Southport Correctional
236 Institutional Road P.O. Box 2000 Pine City, New York 14871

← Additional page

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes ☐ No ☒

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

_____ Dismissed (check the box which indicates why it was dismissed):

_____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

_____ By court for failure to exhaust administrative remedies;

_____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

_____ By court due to your voluntary withdrawal of claim;

_____ Judgment upon motion or after trial entered for

_____ plaintiff

_____ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes _____ No ☒

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|----------------------|--------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • <u>Due Process</u> | • <u>Excessive Force</u> | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) December 2, 2009.

defendant (give the **name and position held** of **each defendant** involved in this incident) Vandergrif, P. Murphy
M. Robyck, Jamie Robinson, Donald Holton, Michael Sheehan

did the following to me (briefly state what each defendant named above did): _____

see attached ⁽²⁾ pages

"Amended complaint"

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Excessive Force, Cruel Unusual -
Punishment, Falsifying Misbehavior Report

The relief I am seeking for this claim is (briefly state the relief sought): \$ 500,000

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes _____ No If yes, what was the result? The grievance
was denied

Did you appeal that decision? ☒ Yes _____ No If yes, what was the result? The appeal
was denied

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

A. SECOND CLAIM: On (date of the incident) _____.

defendant (give the **name and position held** of **each defendant** involved in this incident) _____

I plaintiff got into a incident with the medical nurse D. Allen a week prior to this incident. Officer Morgan was escorting the nurse on medication rounds when the incident happened. Approximately ten minutes after this incident happen with the medical nurse Officer Morgan and Vandergrif came back to plaintiff cell (C-11-13) and threatened me with physical harm in the near future.

Paragraph 2

On December 2, 2009 C-block 11 gallery had a institutional search, when the officer got to 13 cell that plaintiff was housed in, I got handcuffed from behind by a officer I only know by face. When the cell door was opened Officer Vandergrif rushed inside knocking me further inside where I was slammed on the bed. Officer Vandergrif began saying didn't I tell you I would come back for you while this officer began assaulting plaintiff with close fists to the head and facial area.

Paragraph 3

I began to feel two officers holding my legs down that I assume was Officer P. Murphy, M. Robyck, or J. Robinson. Officer Vandergrif continue to assault plaintiff for approximately three to five minutes hitting me in the face, ears, eyes, nose and mouth areas. Officer Murphy, Robyck, or Robinson then applied the leg restraints to plaintiff ankles, I was lifted up off the bed by all officers mentioned. When these officers carried plaintiff out the cell and got plaintiff to the front of the cell Officer Vandergrif began to choke plaintiff by grabbing plaintiff with his hands around my neck. Plaintiff was choke until I almost passed out, the officer Vandergrif slammed me to the floor.

Paragraph 4

After all this I remembered being drag down the gallery by these some officers and placed in the shower area. I was threatened by vandergrif that if I mentioned him to anybody or wrote a grievance about this I would be assaulted again. I was seen by medical medical who ordered the officers to carry me out of the shower so I could be photographed. I was placed on a stretcher by several different officers and escorted to the facility clinic I was interviewed by doctor canfield who informed staff (sergeant and officers) I was cleared to go back to my block. I was escorted to B-block 1 gallery by stretcher via sergeant, officers. No further incident.

Paragraph 5

Officer vandergrif violated plaintiff's 8th Amendment rights by maliciously and sadistically causing harm to plaintiff. The force was not applied in a good faith effort to maintain or restore discipline. Plaintiff was in restraints from behind (hands) and plaintiff never attempted to assault a officer.

Paragraph 6

Officer P. Murphy violated plaintiff 14th and 8th Amendment rights by falsifying a misbehavior report by maliciously and sadistically causing harm in relation to the ordinary incident of prison life. The force ~~that applied~~ was not applied in a good faith effort to maintain discipline when officer murphy acting in concert with officer vandergrif.

Paragraph 7

Officer J. Robinson and M. Robyck violated plaintiff 8th Amendment rights by maliciously and sadistically causing harm to plaintiff The force was not applied in a good faith effort to maintain or restore discipline Plaintiff was in restraints from behind (hands) and plaintiff never attempted to assault a officer.

Sergeant D. Holton violated plaintiff 8th Amendment rights maliciously and sadistically causing harm to plaintiff by not supervising the gallery and witnessing all inmates being escorted out of our cell, by the officers conducting the institutional search. The force used was not a necessary part of prison discipline.

Paragraph 9

Acting Superintendent M. Shehan violated plaintiff 8th Amendment rights by not conducting a proper investigation after this alleged attempted assault (Grievance # SPT-48304-09) and allowing his officers to continue to threaten and harass plaintiff (Grievance SPT-48380-09) with future reprisals for filing a grievance. Acting superintendent M. Shehan violated plaintiff's 14th Amendment rights by not affording plaintiff with the necessary documents (Unusual Incident Reports, Use of Force - Reports, To and From Memo's, and Use of Force Photos) to defend myself at the Disciplinary Superintendents Hearing for this alleged incident. By M. Shehan's actions he violated plaintiff his due process of law and a fair impartial hearing.

did the following to me (briefly state what each defendant named above did): _____

The constitutional basis for this claim under 42 U.S.C. § 1983 is: _____

The relief I am seeking for this claim is (briefly state the relief sought): _____

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? _____ Yes _____ No If yes, what was the result? _____

Did you appeal that decision? _____ Yes _____ No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

Compensatory money damages, punitive damages for physical injury, mental injury, and emotional injury at the sum of \$500,000.

Do you want a jury trial? Yes ☒ No ☐

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 19, 2010
(date)

NOTE: *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*

Michael Fredericks

Signature(s) of Plaintiff(s)